IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2873 OF 2004

IN

SUMMONS FOR JUDGMENT NO.1290 OF 2001

IN

SUMMARY SUIT NO.3598 OF 2001

Vijaykumar Bachhraj Jain ... Plaintiff.

vs.

M/s.Cyclo Transmission Ltd. ... Defendant.

Ms.Nitu Solanki i/b. Kiran Jain & Co., for Plaintiff.

Mr.A.H.Fatangare, for Defendant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 18th March, 2005.

P.C.:-

1. This is a notice of motion taken out by the defendant for setting aside the ex-parte decree. Though the reasons given in the affidavit filed in support of the notice of motion for remaining absent when the decree

was passed, are not convincing, as the learned Counsel for defendant stated that the defendant is willing to deposit the amount of Rs.4,00,000/- (Rupees Four lakhs only) in the Court without prejudice to his rights and contentions and also willing to pay as and by way of costs of this Notice of Motion an amount of Rs.10,000/- (Rupees Ten thousand only) to the plaintiff, the learned counsel for plaintiff has no objection to dispose of this notice of motion in the following terms:-

2. In case, within a period of six weeks from today, the defendant deposits the amount of Rs.4,00,000/- (Rupees Four lakhs only) in this Court with due intimation to the plaintiff and pay an amount of Rs.10,000/- to the Advocate appearing for the plaintiff as and by way of costs, this notice of motion shall stands granted in terms of prayer clause (a).

3. In that event, the defendant shall file his affidavit in Summons for Judgment no.1290 of 2001 within a period of two weeks from the date of deposit of the amount.

4. The office shall thereafter place the Summons for Judgment no.1290 of 2001 for hearing before the

appropriate Court.

5. The Prothonotary and Senior Master of this Court shall permit the plaintiff to withdraw the amount deposited by the defendant, on the plaintiff furnishing undertaking to the Court to re-deposit the amount, if so directed by this Court and on such terms and conditions as may be directed by this Court. The disposal of that amount shall be governed by the order that may be passed in the Summons for Judgment no.1290 of 2001 or in the Suit.

6. In case, the defendant fails to deposit the amount as directed above, this Notice of Motion shall be treated as rejected.

7. The Prothonotary and Senior Master of this Court shall permit the plaintiff to withdraw the amount within a period of four weeks after furnishing the undertaking as directed above.

8. If the amount is not withdrawn within a period of four weeks by the plaintiff, the Prothonotary and Senior Master of this Court shall invest that amount in a fixed deposit in a Nationalised Bank until further orders of the Court.

Notice of Motion disposed of.

18.3.2005 ---